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ABSTRACT

When U.S. President Richard Nixon resigned in 1974 in the wake of the Watergate scandal, it was only the second time that impeachment of a president had been considered. Although the U.S. Constitution has provisions for a person removed from office to be indicted, there are no guidelines in the Constitution about a President who has resigned. The document used in this lesson plan deals with a specific question: should the Watergate special prosecutor seek an indictment of the former President? The lesson plan presents a historical overview of Richard Nixon and Watergate; reproduces three documents, including the Watergate special prosecution force memorandum and a chronology of events; cites correlation to the National History Standards and the National Civics and Government Standards; and suggests two activities for classroom implementation. Also contains a written document analysis worksheet. (BT)

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TEACHING WITH DOCUMENTS

Constitutional Issues – Watergate and the Constitution

SO 033 946

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Teaching With Documents Lesson Plan:

Constitutional Issues - Watergate and the Constitution

Background

When Richard Nixon resigned in 1974 in the wake of the Watergate scandal, it was only the second time in our history that impeachment of a President had been considered. Nearly every action taken with regard to the case had some constitutional significance. The document shown here deals with a specific question: Should the Watergate Special Prosecutor seek an indictment of the former President?

It is two pages of a three-page memorandum written for the Watergate Special Prosecutor in August 1974, after Richard Nixon resigned the Presidency and before President Ford pardoned him. (The third page adds one more item to the pro-indictment list and adds another category, "delay decision.")

The Office of the Special Prosecutor was created by Executive Order in May 1973 and twice faced the question of whether to seek an indictment of Richard Nixon. The first time was in March 1974, when the grand jury handed down indictments of seven White House aides for perjury and obstruction of justice.

President Nixon was named an "unindicted coconspirator" at that time because Watergate Special Prosecutor Leon Jaworski advised the grand jury that in his opinion a sitting President could not be indicted. In his view, the House Judiciary Committee was the appropriate body under the Constitution for examining evidence relating to the President.

The House Judiciary Committee pursued its constitutional mandate and drew up five articles of impeachment, three of which they approved in the summer of 1974. When the President was forced by the Supreme Court in August 1974 to surrender tape recordings that revealed his knowledge of the cover-up, even his staunchest supporters in the House admitted that they would have to vote in favor of impeachment. On August 9, 1974, President Richard Nixon resigned the Presidency

and became citizen Richard Nixon.

Thus, for the second time the Watergate Special Prosecutor's Office faced the question of whether or not to seek an indictment. Article I, section 3, clause 7 of the Constitution provides that a person removed from office by impeachment and conviction "shall nevertheless be liable to Indictment, Trial, Judgment and Punishment, according to the Law." But there are no guidelines in the Constitution about a President who has resigned. The memorandum shown here is typical of others in this file. It outlines reasons for and against pursuing an indictment against Richard Nixon. It is taken from Records Relating to Richard M. Nixon, Records of the Watergate Special Prosecution Force, Record Group 460.

The Document

Document 1: Watergate Special Prosecution Force Memorandum
National Archives and Records Administration
Records of the Watergate Special Prosecution Force
Record Group 460

Document 2: Transcription of Document 1

Document 3: Chronology of Events

Lesson Resources

Standards Correlations

Teaching Activities

Document Analysis Worksheet

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Teaching Activities

Standards Correlations

This lesson correlates to the National History Standards.

- Era 10-Contemporary United States (1968 - present)
  - Standard 1A-Demonstrate understanding of domestic politics from Nixon to Carter.

This lesson also correlates to the National Standards for Civics and Government.

- Standard I.C.1-Evaluate, take, and defend positions on what conditions contribute to the establishment and maintenance of constitutional government.
- Standard III.D.1-Evaluate, take, and defend positions on the role and importance of the law in the American political system.

Cross-curricular Connections

Share this exercise with your history and government colleagues.

Activities

The activities below assume that students are familiar with the Watergate scandal. Textbooks may vary in the extent of their coverage, so you may want to supplement the textbook with a chronology of events (Document 3).

1. Before distributing the document, ask students whether or not they would have been in favor of prosecuting the former President in August 1974 and why. List their reasons on the board. Duplicate and distribute copies of the document and ask them to choose the argument on each side that seems most persuasive to them. Ask for volunteers to stage a class debate on the question: Should the Watergate Special Prosecutor seek an indictment of Richard Nixon?

2. The framers of the Constitution purposely created a system of government in which the three branches would be in a state of tension when in disagreement. This tension has often been criticized for paralyzing the processes of government. However, it is generally agreed that these very

tensions, together with the vigorous efforts of a free press, worked to reveal the full extent of the Watergate scandal. In order to illustrate this, ask students to match the unit of each branch of government with the event for which it was responsible.

The Legislative Branch

1. Senate Select Committee on Presidential Campaign Activities
2. House Judiciary Committee

The Executive Branch

3. President
4. Office of the Watergate Special Prosecutor

The Judicial Branch

5. U.S. Supreme Court
6. U.S. District Court of the District of Columbia
    a. imposed heavy sentences on the Watergate burglars, hoping they would talk
    b. claimed executive privilege
    c. investigations here revealed existence of White House taping system
    d. requested a trial subpoena for 64 White House tapes for evidence in the Watergate cover-up trial
    e. adopted three articles of impeachment
    f. ruled that executive privilege does not extend to criminal proceedings and that the President must turn over the tapes

-- KEY --

1.**c**, 2.**e**, 3.**b**, 4.**d**, 5.**f**, 6.**a**

3. Ask students to look up each of the following sections of the Constitution and explain how it relates to the story of Watergate. Also ask them to indicate which of these constitutional references are referred to in the document shown here.

    a. Article I, section 2, clause 5
    b. Article I, section 3, clause 6
    c. Article I, section 3, clause 7
    d. Article II, section 1, clause 8
    e. Article II, section 2, clause 4

f. Amendment I

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WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

TO : Leon Jaworski
Special Prosecutor

DATE: August 9, 1974

FROM : Carl B. Feldbaum
Peter M. Kreindler

SUBJECT: Factors to be Considered in Deciding Whether to Prosecute Richard M. Nixon for Obstruction of Justice

In our view there is clear evidence that Richard M. Nixon participated in a conspiracy to obstruct justice by concealing the identity of those responsible for the Watergate break-in and other criminal offenses. There is a presumption (which in the past we have operated upon) that Richard M. Nixon, like every citizen, is subject to the rule of law. Accordingly, one begins with the premise that if there is sufficient evidence, Mr. Nixon should be indicted and prosecuted. The question then becomes whether the presumption for proceeding is outweighed by the factors mandating against indictment and prosecution.

The factors which mandate against indictment and prosecution are:

1. His resignation has been sufficient punishment.

2. He has been subject to an impeachment inquiry with resulting articles of impeachment which the House Judiciary Committee unanimously endorsed as to Article I (the Watergate cover-up).

3. Prosecution might aggravate political divisions in the country.

4. As a political matter, the times call for conciliation rather than recrimination.

5. There would be considerable difficulty in achieving a fair trial because of massive pre-trial publicity.

Document 1: Watergate Special Prosecution Force Memorandum, page 1

The factors which mandate in favor of indictment and prosecution are:

1. The principle of equal justice under law requires that every person, no matter what his past position or office, answer to the criminal justice system for his past offenses. This is a particularly weighty factor if Mr. Nixon's aides and associates, who acted upon his orders and what they conceived to be his interests, are to be prosecuted for the same offenses.

2. The country will be further divided by Mr. Nixon unless there is a final disposition of charges of criminality outstanding against him so as to forestall the belief that he was driven from his office by erosion of his political base. This final disposition may be necessary to preserve the integrity of the criminal justice system and the legislative process, which together marshalled the substantial evidence of Mr. Nixon's guilt.

3. Article I, Section 3, clause 7 of the Constitution provides that a person removed from office by impeachment and conviction "shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law." The Framers contemplated that a person removed from office because of abuse of his public trust still would have to answer to the criminal justice system for criminal offenses.

4. It cannot be sufficient retribution for criminal offenses merely to surrender the public office and trust which has been demonstrably abused. A person should not be permitted to trade in the abused office in return for immunity.

5. The modern nature of the Presidency necessitates massive public exposure of the President's actions through the media. A bar to prosecution on the grounds of such publicity effectively would immunize all future Presidents for their actions, however criminal. Moreover, the courts may be the appropriate forum to resolve questions of pre-trial publicity in the context of an adversary proceeding.

Document 1: Watergate Special Prosecution Force Memorandum, page 2

Teaching With Documents Lesson Plan:
Constitutional Issues -
Watergate and the Constitution

Transcript:

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Document 2: Transcription of Document 1

Teaching With Documents Lesson Plan:
Constitutional Issues -
Watergate and the Constitution

Watergate: A Chronology

May 28, 1972 Electronic surveillance ("bugging") equipment is installed at Democratic National Committee headquarters in the Watergate building.

June 17, 1972 Five men are arrested while attempting to repair the surveillance equipment at Democratic National Committee headquarters.

August 30, 1972 President Nixon announces that John Dean has completed an investigation into the Watergate buggings and that no one from the White House is involved.

September 15, 1972 Bernard Barker, Virgilio Gonzalez, E. Howard Hunt, G. Gordon Liddy, Eugenio Martinez, James W. McCord, Jr., and Frank Sturgis are indicted for their roles in the June break-in.

January 8, 1973 Watergate break-in trial opens. Hunt pleads guilty (January 11); Barker, Sturgis, Martinez, and Gonzalez plead guilty (January 15); Liddy and McCord are convicted on all counts of break-in indictment (January 30).

February 7, 1973 U.S. Senate creates Select Committee on Presidential Campaign Activities.

April 17, 1973 President Nixon announces that members of the White House staff will appear before the Senate Committee and promises major new developments in investigation and real progress toward finding truth.

April 23, 1973 White House issues statement denying President had prior knowledge of Watergate affair.

April 30, 1973 White House staff members H. R. Haldeman, John D. Ehrlichman, and John Dean resign.

May 17, 1973 Senate Committee begins public hearings.

May 25, 1973 Archibald Cox sworn in as Special Prosecutor.

July 7, 1973 President Nixon informs Senate Committee that he will not appear to testify nor grant access to Presidential files.

July 16, 1973 Alexander Butterfield informs Senate Committee of the presence of a White House taping system.

July 23, 1973 Senate Committee and Special Prosecutor Cox subpoena White House tapes and documents to investigate cover-up.

July 25, 1973 President Nixon refuses to comply with Cox subpoena.

August 9, 1973 Senate Committee files suit against President Nixon for failure to comply with subpoena.

October 19, 1973 President Nixon offers Stennis a compromise on the tapes; that is, Senator John Stennis (D-Miss.) would review tapes and present the Special Prosecutor with summaries.

October 20, 1973 Archibald Cox refuses to accept the Stennis compromise. President Nixon orders Attorney General Elliot Richardson to fire Cox, but Richardson refuses and resigns in protest. Acting Attorney General Robert Bork fires Cox. These events come to be known as the "Saturday Night Massacre."

October 23, 1973 President Nixon agrees to hand over tapes to comply with subpoena

November 1, 1973 Leon Jaworski named Special Prosecutor.

November 21, 1973 Senate Committee announces discovery of 18½ minute gap on tape of Nixon-Haldeman conversation of June 20,1972.

February 6, 1974 House of Representatives authorizes House Judiciary Committee to investigate whether grounds exist for impeachment of President Nixon.

April 16, 1974 Special Prosecutor issues subpoena for 64 White House tapes.

April 30, 1974 President Nixon submits tape transcripts to House Judiciary Committee.

July 24, 1974 Supreme Court unanimously upholds Special Prosecutor's subpoena for tapes for Watergate trial.

July 27, 1974 House Judiciary Committee adopts article I of impeachment resolution

charging President with obstruction of investigation of Watergate break-in.

July 29, 1974 House Judiciary Committee adopts article II of impeachment resolution charging President with misuse of powers and violation of his oath of office.

July 30, 1974 House Judiciary Committee adopts article III of impeachment resolution, charging the President with failure to comply with House subpoenas.

August 9, 1974 President Richard Nixon resigns.

September 8, 1974 President Gerald Ford pardons former President Nixon.

Page http://www.archives.gov/digital_classroom/lessons/watergate_and_constitution/
URL: chronology.html

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Document 3 – Chronology of Events

Written Document Analysis Worksheet

1. TYPE OF DOCUMENT (Check one):

___ Newspaper	___ Map	___ Advertisement
___ Letter	___ Telegram	___ Congressional record
___ Patent	___ Press release	___ Census report
___ Memorandum	___ Report	___ Other

2. UNIQUE PHYSICAL QUALITIES OF THE DOCUMENT (Check one or more):

___ Interesting letterhead	___ Notations
___ Handwritten	___ "RECEIVED" stamp
___ Typed	___ Other
___ Seals	

3. DATE(S) OF DOCUMENT:

_____

4. AUTHOR (OR CREATOR) OF THE DOCUMENT:

_____

POSITION (TITLE):

_____

5. FOR WHAT AUDIENCE WAS THE DOCUMENT WRITTEN?

_____

6. DOCUMENT INFORMATION (There are many possible ways to answer A-E.)

A. List three things the author said that you think are important:

_____
_____
_____

B. Why do you think this document was written?

_____
_____

C. What evidence in the document helps you know why it was written? Quote from the document.

_____
_____

D. List two things the document tells you about life in the United States at the time it was written:

_____
_____

E. Write a question to the author that is left unanswered by the document:

_____
_____

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